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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,433	01/18/2002	Geoffrey Hamilton White	PAT-1285DIV	5904

7590 06/01/2004

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EXAMINER

PELLEGRINO, BRIAN E

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 06/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/051,433

Applicant(s)

WHITE ET AL.

Examiner

Brian E Pellegrino

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 23-30,33,34,36-41,44,45,47-53,56,57,59-64 and 67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 27,30,38,41,61 and 64 is/are allowed.
- 6) ☒ Claim(s) 23-26,29,33,34,36,37,40,44,45,47-50,52,53,56,57,59,60,63 and 67 is/are rejected.
- 7) ☒ Claim(s) 28,39,51 and 62 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/23/04 has been entered.

### ***Oath/Declaration***

This application presents a claim for subject matter not originally claimed or embraced in the statement of the invention. Although it is understood that according to MPEP 608.01(I) that original claims (preliminary amendment since submitted with the filing of this application) are treated as to what is supported either in the drawing or written description, these claims were not referred to by the declaration. These claims contain subject matter not found in the written description. A supplemental oath or declaration is required under 37 CFR 1.67. If applicant wishes to have the preliminary amendment be treated as part of the continuing application as filed then a supplemental declaration must properly reference the preliminary amendment along with the surcharge.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "cells having exactly twelve bends" must be shown or the feature(s) canceled from the claim(s). According to the Examiner's understanding of Fig. 15A, the second row of cells with a different orientation clearly does not have 12 bends, it has more than 12 and does not have "exactly 3 acute or less than 90 degree apices".

Additionally, the stent having "straight portions between **each** of the bends" must be shown or the feature(s) canceled from the claim(s). According to the Examiner's understanding of the drawings (Fig. 15A) the central bottom portion of the cell is curved and has no straight portions. It is understood to be one of the claimed "exactly 12 bends" or a curve and therefore cannot be said to be a straight portion between two bends.

Also the stent with "four of the twelve bends extending outside the cell" must be shown or the feature(s) canceled from the claim(s). According to the Examiner's understanding of the claimed subject matter **7** bends extend outside the cell and **5** inside as claimed.

No new matter should be entered. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

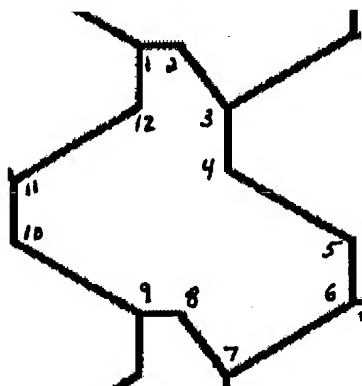
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

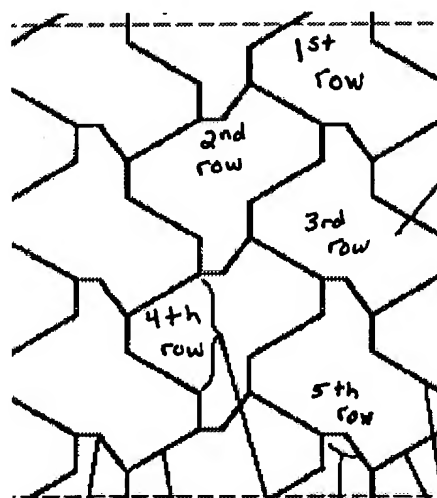
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 23-26, 29, 33, 34, 36, 37, 40, 44, 45, 47-49, 52, 56, 57, 59, 60, 63, 67 are rejected under 35 U.S.C. 102(e) as being anticipated by Jang (5922021). Fig. 3B shows a stent cell that has exactly 12 bends and exactly 4 struts connected with each other to form the cell. It can also be seen the struts have exactly two spaced apart bends. It can also be seen that bend # 8 is "centrally located" and extends into the cell and at least 4 bends extend outside the cell. Also shown below, 1<sup>st</sup> and 2<sup>nd</sup> rows differ in orientation.

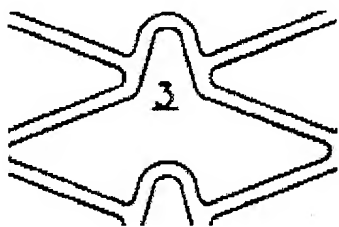


example of a cell



shows adjacent cells and rows

Claims 50,53 are rejected under 35 U.S.C. 102(b) as being anticipated by Richter (5807404). Fig. 2 shows a plurality of cells with each being non-symmetrical about the longitudinal axis. Each cell is also directly connected to an adjacent cell. Richter also teaches to form the cells from exactly four struts (4,5,6,7). It can also be seen as shown below that there are exactly 3 bends with acute apices.



#### ***Allowable Subject Matter***

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Claims 28,39,51,62 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 27,30,38,41,61,64 are allowed.

***Response to Arguments***

Applicant failed to address the problems noted in the priority and oath paragraphs presented in the prior office action and thus the oath issue is repeated. Applicant's arguments with respect to claims 23-30,33,34,36-41,44,45,47-53,56,57 and 59-64,67 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Pellegrino whose telephone number is (703) 306-5899. The examiner can normally be reached on Monday-Thursday from 8am to 5:30pm. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached at (703) 308-2111. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

TC 3700, AU 3738

Brian E. Pellegrino

*Brian E. Pellegrino*